IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 827 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAMBHULAL RAVAJI

Versus

SONARA FATMABAI

Appearance:

MR DHIRENDRA MEHTA for MR PV HATHI for Petitioner

MR CH VORA for Respondent No. 1

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 30/06/2000

ORAL JUDGEMENT

The original plaintiff has filed this appeal challenging the judgment and decree dated 17.11.1978 passed in Special Civil Suit No. 4 of 1977 by the learned Civil Judge (SD) Kutchch at Bhuj. By the said judgment, the learned trial judge was pleased to partly

allowed the suit by holding that the plaintiff shall recover Rs. 6850/ from the defendant together with interest at 6% per annum from the date of the suit till realisation of the decree from the defendant. It may be stated that the defendant also challenged the said judgment by filing an appeal being First Appeal No. 873/1979 which was summarily dismissed on 18.7.1979 by this Court, therefore, the judgment and decree of Rs.. 6850/ with interest at the rate of 6% per annum is binding to the defendant.

As per the pleadings of the parties, an agreement dated 28.8.75 was executed whereby the defendant agreed to sell the suit premises alongwith tenant for Rs. 1,53,000/ to the plaintiff. Accordingly, the husband of the defendant Haji Ismail Haji Usuf as a Power of Attorney holder executed the document of agreement to sell in favour of the plaintiff by accepting the cheque of Rs. 5000/ dated 28.8.75 from the plaintiff. It was agreed between the parties that the defendant will obtain valuation certificate and income tax clearance certificate within two months and will execute the registered sale-deed within eight days of obtaining income tax clearance certificate by accepting Rs. 1,48,000/ from the plaintiff after clearing the title of the suit property, at her expenses and get it registered and deliver possession of the suit property with the tenant. It was further the case of the plaintiff that on 1.9.75 the power of attorney holder of defendant took Rs.1000/ from him and passed the receipt. As the stipulated period of two months was over, the plaintiff informed the defendant to perform her part of the contract by accepting Rs. 1,47,000/ and also informed her broker , but they replied that the valuation and income tax certificates were not obtained and therefore, the plaintiff did not take any step up to 1.3.76. The plaintiff on 1.3.76, in fact, served a registered notice through his advocate on the power of attorney holder of the defendant for specific performance of the contract and the same was received on 3.3.76. In reply to the same, the defendant stated that the sale-deed was to be executed at the costs of the plaintiff as per agreement on the stamp paper purchased on 28.8.75 and that there was no condition of obtaining valuation and income tax certificate and that Rs. 1000/ were paid by the plaintiff towards expenses of the sale deed. Again on 14.3.76 by written communication called upon the defendant to perform her part of contract. The parties thereafter exchanged many communications making allegations and counter allegations against each other. Ultimately, the plaintiff filed the present suit to

recover Rs. 5000/ and claimed Rs. 21,750/ by way of compensation and or damages and Rs. 850/ towards interest at 10% per annum of Rs. 6000/ after giving credit of Rs. 8775/ by way of interest at 5% on Rs. 1,47,000/ from 28.10.75 to 11.1.77.

The defendant in her written statement exh. 17 contested the suit. While denying the various allegations made in the plaint, it was contended in the written statement that the plaintiff wanted to avoid the contract from the very beginning. According to the defendant, the defendant was ready and willing to perform her part of the contract and the false suit has been filed to recover back his earnest money.

On the basis of the pleadings, the learned trial judge framed issues at ex. 23 and, after appreciating the evidence on record, was pleased to hold that the plaintiff has proved that he was ready and willing to perform his part of contract and that the defendant has committed the breach of the contract. The learned trial judge has specifically held that the defendant failed to prove that she was ready and willing to perform her part of contract and that defendant further failed to prove that the first agreement dated 27.8.75 was cancelled by second agreement. As far as payment of Rs. 1000/ was concerned, the learned trial judge was pleased to hold that the plaintiff has proved that Rs. 1000/ has been paid towards the earnest money over and above Rs. 5000/. Since the learned trial judge was pleased to pass the decree to the extent of Rs. 6850/ in favour of the plaintiff, the present appeal is filed claiming the rest of the amount as prayed for in the suit.

Mr Mehta learned advocate appearing for the appellant submitted that the trial court has committed an error by not properly interpreting Sec. 74 of the Indian Contract Act, inasmuch as that when the Court comes to the conclusion that whatever the lose or damage caused by contract, the sufferer should be compensated. In the submission of Mr. Mehta, once the breach of contract is established, the plaintiff can get the damage even without filing a suit for specific performance.Mr Mehta submitted that the learned trial judge has also committed an error in not awarding the interest on Rs. 1,47,000/ which was lost by him on account of breach of the agreement on the part of the defendant. Mr. CH Vora, learned advocate for the respondent, on the other hand supported the finding of the learned trial judge on that

count in toto.

In view of the finding recorded by the learned trial judge, in favour of the plaintiff regarding the breach of the agreement of sale and the question of breach of agreement which is now concluded as the appeal preferred by the defendant is dismissed by this Court. The only question to be decided is to what amount the plaintiff is entitled to get, it is not necessary for me to refer to the oral as well as documentary evidence. The learned advocates for the parties have rightly not invited my attention to the evidence on record. The plaintiff has claimed Rs. 850/ towards interest on Rs. 6000/.He has also claimed Rs. 21,750/ by way of compensation and or damages being the amount of rent recovered from the defendant's tenant by contending that if the defendant had not committed the breach of agreement to sell dated 28.8.75 he could have recovered the possession and earned the amount from the tenant.

Section 73 of the Indian Contract Act deals with the compensation for any loss or damage caused by breach of contract provides that any contract is broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the party knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach. On the plain reading of the said provision, it is clear that the party, who suffers because of the breach of the contract, is entitled to compensation for the loss or damage caused to him, but the parties are not entitled to get the compensation for any remote and indirect loss or damage sustained by reason of the breach.

Section 74 of the Indian Contract Act, deals with compensation for breach of contract where penalty is stipulated and it provides that when a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named, or as the case may be, the penalty stipulated

for. On reading this provision, it is clear that once a contract is broken, the sufferer is entitled to receive the sum of amount, if named in the contract for the breach. Further if any other stipulation by way of penalty is provided in the contract, the sufferer is entitled to receive the penalty stipulated for irrespective of the fact that whether it proves actual damage or loss having been caused from the party who has broken the contract.

Applying the aforesaid provisions to the facts of the case, admittedly, no amount of penalty is stipulated for the breach of the agreement by the parties. Therefore, the plaintiff who is sufferer for the breach of the contract is required to prove the actual damage or loss sustained by him. The plaintiff, on the basis of agreement of sale, in absence of any final sale-deed cannot ipso facto base his claim of damage by calculating the amount of rent received by the defendant from the tenant. Even if the court has power under the said provisions to fix the reasonable amount of compensation, but the reasonable amount of compensation cannot and should not include the amount of rent received by the defendant during the period in question. In absence of any relief for specific performance of contract, it would be too early for the plaintiff to include the amount of rent as the amount of compensation/damage from the defendant. In my opinion, the claim of Rs. 21,750/ by way of compensation towards the rent in absence of possession having been delivered to the plaintiff would be remote and indirect loss which cannot be claimed by way of damage. The learned trial judge has, therefore, rightly rejected the said amount of Rs. 21,750/ to the plaintiff.

With regard to the second submission of Mr. Mehta that he is entitled to get the interest on the amount of Rs.. 1,47,000/. I am of the view that the appellant is not entitled to get any interest for the simple reason that the appellant has retained the said amount with him. Merely because he was ready and willing to perform his part of the contract that does not mean that he is entitled to receive interest on the said amount especially when he has not parted with the said amount with the defendant. There being no substance in this appeal, the same is dismissed with no order as to costs.

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